

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 0916106

Yvonne L. Hemmings,

APPELLANT
CLAIMANT,

vs.

Richland Community Health Care,

EMPLOYER,

AND

The Hartford,

CARRIER,
DEFENDANTS/RESPONDENTS

Appellate Panel Review held in Columbia, South Carolina,
on per notices timely and properly served
upon all parties of interest.

Appellate Panel Decision and Order filed
October 15, 2019

APPEARANCES:

Appellant Yvonne L. Hemmings, Claimant appeared *Pro Se*.

Defendants/Respondents represented by Sarah C. Sutusky,
Esquire of Willson Jones Carter & Baxley, P.A. in Columbia,
South Carolina.

RECEIVED

DEC 27 2019

SC Court of Appeals

STATEMENT OF THE CASE

The Claimant sustained an injury by accident on August 27, 2009 and was represented by Attorney Ann Mickle in the matter. The Claimant ultimately settled this claim through a full and final Clincher Settlement Agreement while she was represented by her attorney. Per that settlement agreement, the parties agreed that Defendants would pay Claimant \$21,091.05 for a proposed Medicare-Set Aside (MSA) that was subject to the approval of Center for Medicare Services (CMS). This proposed MSA represented the cost of disputed future medical care and to release all future liability for future medical care.

Per the terms of the settlement agreement, this proposed MSA was subject to CMS approval and the settlement provided that in the event CMS did not approve the proposed MSA, Defendants had the sole right to choose to fund the additional amount required by CMS or to revise this settlement agreement to leave causally-related medical treatment open for the compensable body parts of the back, left wrist, and left knee. The parties specifically agreed that the decision of whether to fund an amount higher than the proposed MSA rested solely with the Defendants.

The settlement agreement was signed by the Claimant and her attorney and was subsequently approved as an Order of the Commission on April 8, 2015. Ultimately, CMS did not approve the proposed MSA amount of \$21,091.05. CMS approved an MSA in the amount of \$22,906.00, and the Defendants elected to fund the additional amount required by CMS in excess of the proposed MSA. Following CMS' approval of the MSA, the Claimant decided that she did not want to accept the money for the MSA. Attorney Ann Mickle obtained an Order relieving herself as the Claimant's counsel and the Claimant has proceeded *pro se* since that time.

The parties proceeded to a settlement conference on December 8, 2016 before Commissioner Wilkerson on Defendants' request for approval of the amended clincher agreement with the revised MSA amount. When Claimant refused to agree to sign the amended clincher agreement,

Commissioner Wilkerson issued an Interim Order setting the claim for a hearing.

A Hearing was set for February 23, 2017. At that time, the Claimant argued that she was not satisfied with the way the claim was closed and the effect on her future medical treatment. She indicated she did not want to accept payment of the CMS approved MSA amount and desired to leave open her causally related future medical care. Defendants maintained that the Claimant agreed to a full and final settlement while represented by an attorney and that settlement agreement was approved by the SCWCC per Order dated April 8, 2015.

Following the February 23, 2017 Hearing, the Hearing Commissioner issued a signed Decision and Order on July 24, 2017. This July 2017 Order holds that pursuant to the Approved Settlement Agreement dated April 8, 2015, Defendants had the sole discretion to elect whether to pay the additional amount of the CMS approved MSA or to elect to revise the settlement agreement to leave open causally related medical care. The July 2017 Order determined that Defendants elected to pay the additional sum of the CMS approved MSA. The Hearing Commissioner held that Defendants are entitled to approval of the CMS approved MSA pursuant to the Approved Settlement Agreement and Order of the Commission dated April 8, 2015. The July 2017 Order states that Defendants may pay the Claimant the amount of the CMS approved MSA and the issuance of that check satisfies Defendants legal obligations pursuant to the April 8, 2015 Order embodying the Approved Settlement Agreement.

Following the July 2017 Order, Defendants issued checks to the Claimant to satisfy their legal obligations pursuant to the April 8, 2015 Order embodying the Approved Settlement Agreement. Rather than cashing the checks, the Claimant filed a Form 50 Hearing Request dated November 9, 2017. This Form 50 alleges injuries to the neck, left shoulder, bilateral knees, lower back, psychological, and heart issues arising out of the August 27, 2009 accident.

The parties were heard by Commissioner R. Michael Campbell, II, on March 28, 2018 in Columbia, South Carolina to determine the issues raised in the Form 50 and 51. On August 28, 2018 he issued the following Order:

FINDINGS OF FACT

IT IS FOUND AS A FACT:

- 1) The Claimant sustained an injury by accident on August 27, 2009 and was represented by Attorney Ann Mickle in the claim. The Claimant ultimately settled this claim through a Clincher (full and final settlement) Agreement while she was represented by her attorney. The Clincher agreement was entered into on April 6, 2015 and was approved by the Commission on April 8, 2015.
- 2) Per that April 8, 2015 Approved Settlement Agreement, the parties agreed that Defendants would pay Claimant \$21,091 for proposed MSA, subject to CMS approval of the proposed MSA, to represent the cost of disputed future medical care and to release all future liability for future medical care. This proposed MSA was subject to CMS approval and the settlement provided that in the event CMS did not approve the proposed MSA, Defendants have the sole right to choose to fund the additional amount required by CMS or to revise this settlement agreement to leave causally-related medical treatment open for the compensable body parts of the back, left wrist, and left knee. The parties specifically agree that the decision of whether to fund an amount higher than the proposed MSA rests solely with the Defendants.
- 3) Ultimately CMS did not approve the proposed MSA amount of \$21,091.05. CMS approved an MSA in the amount of \$22,906.00. Defendants elected to fund the additional amount required by CMS in excess of the proposed MSA.
- 4) Following CMS approving an MSA, the Claimant decided that she did not want to accept the money for the MSA.
- 5) Attorney Ann Mickle obtained an Order relieving herself as the Claimant's counsel and the Claimant has proceeded pro se since that time.
- 6) The parties proceeded to a settlement conference on December 8, 2016 before Commissioner Wilkerson on Defendants' request for approval of the amended clincher agreement with the revised MSA amount. Because Claimant refused to agree to the amended clincher agreement, Commissioner Wilkerson issued an Interim Order setting the claim for a hearing.
- 7) A hearing was held on February 23, 2017. At that hearing, the Claimant stated she did not want to accept payment of the CMS approved MSA amount and desired to leave open her causally related future medical care. Defendants maintained that the Claimant agreed to a full and final settlement while represented by an attorney and that settlement agreement was approved by the SCWCC per Order dated April 8, 2015. Defendants argued the Claimant was bound by the terms of the Approved Settlement Agreement.
- 8) Following the February 23, 2017 Hearing, the Hearing Commissioner issued a signed Decision and Order on July 24, 2017.
- 9) In the July 24, 2017 Order, the Hearing Commissioner held that Defendants were entitled to approval of the CMS approved MSA pursuant to the Approved Settlement Agreement and Order of the Commission dated April 8, 2015.

- 10) The July 24, 2017 Order states that Defendants may pay the Claimant the amount of the CMS approved MSA and the issuance of that check satisfies Defendants legal obligations pursuant to the April 8, 2015 Order embodying the Approved Settlement Agreement.
- 11) Following the July 2017 Order, Defendants issued checks to the Claimant to satisfy their legal obligations pursuant to the April 8, 2015 Order embodying the Approved Settlement Agreement.
- 12) Claimant refused to accept payment.
- 13) Claimant filed a Form 50 Hearing Request dated November 9, 2017 alleging injuries to the neck, left shoulder, bilateral knees, lower back, psychological, and heart issues arising out of the August 27, 2009 accident.
- 14) Defendants responded with a Form 51 stating the only admitted injuries were to the back, left wrist, and left knee, with all other alleged injuries being denied. Defendants state in the Form 51 that this case settled on a full and final clincher, upheld by Commission Order and Defendants deny the Claimant is entitled to any further benefit.
- 15) On March 28, 2018, a Hearing was held before the Undersigned Single Commissioner to address issues raised on the Forms 50 and 51. At the Hearing, Claimant requested compensability and medical treatment for denied body parts and items to be installed at her home. She stated she attempted to appeal the previous Decision and Order.
- 16) Defendants argued due to the Clincher Agreement the matter is res judicata and the unappealed Decision and Order is the law of the case. Defendants again presented to the Claimant checks for the amount of the CMS approved MSA. Claimant declined to accept payment.
- 17) Upon review of the Commission's file, the Undersigned Commissioner finds no record of a filed Form 30 or other request for appeal.
- 18) Therefore, this matter is hereby dismissed as res judicata and the prior Decision and Order is the law of the case.

CONCLUSION OF LAWS

Accordingly, as provided in § 42-17-40, SC Code Ann. (1976), as amended, it is the determination of this Commission that:

- 1) This matter is dismissed as res judicata and the July 24, 2017 Decision and Order is the law of this case.

ORDER/AWARD

IT IS, HEREBY, ORDERED that this matter is dismissed as res judicata and the July 24, 2017 Decision and Order is the law of this case. Defendants have complied with all Orders and have issued payment to Claimant per Orders. Claimant has refused and continued to refuse to accept payment.

The Claimant now appeals this August 28, 2018 Order issued by Commissioner Campbell and requests review by the Full Commission.

FINDINGS OF FACT

Based upon the documentary evidence submitted by the respective parties, pursuant to the Administrative Procedures Act, and the Commission's file relative to this claim, WE, THE APPELLATE PANEL, FIND THE FOLLOWING AS FACT:

- 1) The Claimant sustained an injury by accident on August 27, 2009 and was represented by Attorney Ann Mickle in the claim. The Claimant ultimately settled this claim through a Clincher (full and final settlement) Agreement while she was represented by her attorney. The Clincher agreement was entered into on April 6, 2015 and was approved by the Commission on April 8, 2015.
- 2) Per that April 8, 2015 Approved Settlement Agreement, the parties agreed that Defendants would pay Claimant \$21,091 for proposed MSA, subject to CMS approval of the proposed MSA, to represent the cost of disputed future medical care and to release all future liability for future medical care. This proposed MSA was subject to CMS approval and the settlement provided that in the event CMS did not approve the proposed MSA, Defendants have the sole right to choose to fund the additional amount required by CMS or to revise this settlement agreement to leave causally-related medical treatment open for the compensable body parts of the back, left wrist, and left knee. The parties specifically agree that the decision of whether to fund an amount higher than the proposed MSA rests solely with the Defendants.
- 3) Ultimately CMS did not approve the proposed MSA amount of \$21,091.05. CMS approved an MSA in the amount of \$22,906.00. Defendants elected to fund the additional amount required by CMS in excess of the proposed MSA.
- 4) Following CMS approving an MSA, the Claimant decided that she did not want

to accept the money for the MSA.

- 5) Attorney Ann Mickle obtained an Order relieving herself as the Claimant's counsel and the Claimant has proceeded pro se since that time.
- 6) The parties proceeded to a settlement conference on December 8, 2016 before Commissioner Wilkerson on Defendants' request for approval of the amended clincher agreement with the revised MSA amount. Because Claimant refused to agree to the amended clincher agreement, Commissioner Wilkerson issued an Interim Order setting the claim for a hearing.
- 7) A hearing was held on February 23, 2017. At that hearing, the Claimant stated she did not want to accept payment of the CMS approved MSA amount and desired to leave open her causally related future medical care. Defendants maintained that the Claimant agreed to a full and final settlement while represented by an attorney and that settlement agreement was approved by the SCWCC per Order dated April 8, 2015. Defendants argued the Claimant was bound by the terms of the Approved Settlement Agreement.
- 8) Following the February 23, 2017 Hearing, the Hearing Commissioner issued a signed Decision and Order on July 24, 2017.
- 9) In the July 24, 2017 Order, the Hearing Commissioner held that Defendants were entitled to approval of the CMS approved MSA pursuant to the Approved Settlement Agreement and Order of the Commission dated April 8, 2015.
- 10) The July 24, 2017 Order states the Defendants may pay the Claimant the amount of the CMS approved MSA and the issuance of that check satisfies Defendants' legal obligations pursuant to the April 8, 2015 Order embodying the Approved Settlement Agreement.

- 11) Following the July 2017 Order, Defendants issued checks to the Claimant to satisfy their legal obligations pursuant to the April 8, 2015 Order embodying the Approved Settlement Agreement.
- 12) Claimant refused to accept payment.
- 13) Claimant filed a Form 50 Hearing Request, dated November 9, 2017, alleging injuries to the neck, left shoulder, bilateral knees, lower back, psychological, and heart issues arising out of the August 27, 2009 accident.
- 14) Defendants responded with a Form 51 stating the only admitted injuries were to the back, left wrist, and left knee, with all other alleged injuries being denied. Defendants state in the Form 51 that this case settled on a full and final clincher, upheld by Commission Order, and Defendants deny the Claimant is entitled to any further benefit.
- 15) On March 28, 2018, a Hearing was held before Commissioner Campbell to address issues raised on the Forms 50 and 51. At the Hearing, Claimant requested compensability and medical treatment for denied body parts and items to be installed at her home. She stated she attempted to appeal the previous Decision and Order.
- 16) Defendants argued due to the Clincher Agreement the matter is res judicata and the unappealed Decision and Order is the law of the case. Defendants again presented to the Claimant checks for the amount of the CMS approved MSA. Claimant declined to accept payment.
- 17) Upon review of the Commission's file, we find no record of a filed Form 30 or other request for appeal.
- 18) Therefore, this matter is hereby dismissed as res judicata and the prior Decision

and Order dated August 28, 2018 is the law of this case.

CONCLUSIONS OF LAW

In view of those Findings of Fact, and as provided in the South Carolina Code of Laws, WE, THE APPELLATE PANEL, CONCLUDE THE FOLLOWING AS MATTERS OF LAW:

- 1) This matter is dismissed as res judicata and the July 24, 2017 Decision and Order (unappealed Order) and August 28, 2018 is the law of this case.

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS, THEREFORE, ORDERED that Claimant's request for relief has been previously adjudicated by the Commission by prior Decision and Order dated July 24, 2017 (unappealed Order) and August 28, 2018.

IT IS FURTHER ORDERED that Claimant's Form 50 Request for Hearing in the above-referenced claim is DENIED and DISMISSED WITH PREJUDICE on the grounds of res judicata.


IT IS FURTHER ORDERED that further pleadings filed by the Claimant against Defendants shall be reviewed by the Jurisdictional Commissioner and shall be administratively dismissed if they relate to the subject matter already decided by the final Orders of the Commission cited above.

IT IS FURTHER ORDERED that Defendants shall be relieved of any obligation to respond to further filings by the Claimant related to the above-referenced claim, unless specifically instructed to respond by the Commission. Nothing contained herein shall be construed to prevent the parties from pursuing a proper appeal of this Decision and Order or pursuing a future, unrelated claim not previously adjudicated by the Commission.

AND IT IS SO ORDERED.

AFFIRMED WITH
AMENDMENT

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



Aisha Taylor, Commissioner

Susan S. Barden, Commissioner

Melody L. James, Commissioner

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on October 15, 2019